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Cover Page Footnote

I would like to express my thanks to Dr. Guillaume Teasdale for his guidance, both in writing this paper and inspiring my interest in the intersection of Aboriginal and legal history.

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Abstract

This paper contends that Pierre Trudeau's 1969 "White Paper" on the status of Aboriginals in Canada was not a major turning point in improving the status of Aboriginals in Canada, but succeeded in inspiring activism and interest in the plight of Canada's First Nations. The policy attempted to redefine the Canadian government's relationship with its Aboriginal peoples, expressing the centrality of the government in Aboriginal affairs and reinforcing its obliviousness to the needs of Canada's First Nations. The White Paper proposed to remove "Indian Status" for Aboriginals, and as a result was vehemently rejected. The effects of the proposed revocation of Status Indians persisted through the social activism and awareness that it inspired. This paper traces the development British-Aboriginal relations following the fall of New France. Diplomacy and treaty-making in the prelude to the White Paper will be considered, along with the changing conception of "Indian Status" throughout Canadian history. Thus, this paper argues that although the White Paper was a necessary step in the realization of the dire condition of Aboriginals in Canada, it did not provoke any lasting government policies that recognized absolute Aboriginal rights and liberties.

Keywords: White Paper, Aboriginal rights, Aboriginal land claims, Canadian History, Canadian-Aboriginal relations

First Nations land rights in Canada have been called into question since European settlers first reached North America. Territorial cessions and disputes pervaded centuries of French and British dominion, and coincided with Canadian confederation. From the British Royal Proclamation of 1763 to the present day, pervasive tensions and disagreements have shaped interactions between First Nations and European colonists. In 1969, Prime Minister Pierre Trudeau and his Minister of Indian Affairs, Jean Chrétien, released the “Statement of the Government of Canada on Indian Policy.” Colloquially known as the “White Paper,” the policy document was the culmination of a century of mismanaged relations between the Government of Canada and the First Nations. The White Paper was intended to redefine the Canadian Government’s relationship with the First Nations. The Paper affirmed the centrality of the federal government in Aboriginal affairs, revoking “Indian status” while claiming to prevent discrimination against First Nations peoples.¹ However, intense backlash from the First Nations immediately following the White Paper’s release prompted the Canadian Government to reject it as unfeasible. As a result, the White Paper was not a major turning point in the struggle for Aboriginal rights and land claims in Canada. Rather, it was a singular event in the continued plight of Canada’s First Nations. By understanding Pierre Trudeau’s White Paper as a catalyst for the expansion of public awareness of the social and legal struggles faced by Canada’s First Nations, it becomes apparent that the 1969 White Paper initiated an improvement in First Nations activism and advocacy, but not tangible change in government policy. The historical significance of the White Paper resonates with present-day supporters of First Nations rights and land claims in Canada. Understanding the origins of and reactions to the 1969 White Paper can help to reveal nuances

¹ Jean Chrétien, “Statement of the Government of Canada on Indian Policy,” Ministry of Indian Affairs and Northern Development to the First Session of the Twenty-Eighth Parliament. 1969.

of the First Nations' continued struggle for recognition.

Formal diplomatic relations between the British and First Nations began with the 1763 British Royal Proclamation. The Proclamation declared that relations between the Crown and First Nations would be on a nation-to-nation basis.² This stipulation recognized the autonomy of the First Nations as a distinct diplomatic power. Treaties were made under the doctrine of *terra nullis*, "nobody's land;" unoccupied land that was free for the taking and was not subject to the sovereignty of a recognized state. Contemporary European perceptions of international law stated that full title could be acquired through conquest; however, the Crown chose to pursue land cessions through treaty and agreement.³ The First Nations were thus considered independent of the Crown when relations were established.⁴

In his work *A New Look at Canadian Indian Policy*, Gordon Gibson outlines two key patterns of diplomacy adopted by the British Crown: nation-to-nation and collective treatment rather than individual treatment.⁵ The Crown favoured the latter principle of collective treatment, signifying that the First Nations were regarded as undeserving of dignified treatment as individuals in legal matters. Therefore, the Crown's perception of the First Nations as a "nuisance to colonization" was the basis for land cessions.⁶ Policies that promoted isolation were convenient for keeping the First Nations out of consideration until the 1960s.⁷ In addition, a court decision of the Judicial Committee of the Privy Council, in the 1888 case *St. Catherine's Milling v. The Queen*, determined that First Nations'

² Gordon Gibson, *A New Look at Canadian Indian Policy: Respect the Collective, Promote the Individual* (Vancouver: Fraser Institute, 2009), 34.

³ Gibson, *A New Look at Canadian Indian Policy*, 35.

⁴ A-G. Gagnon, "Canada: Unity and Diversity," *Parliamentary Affairs* 53, no. 1 (2000): 14.

⁵ Gibson, *A New Look at Canadian Indian Policy*, 36.

⁶ Gibson, *A New Look at Canadian Indian Policy*, 36.

⁷ Gibson, *A New Look at Canadian Indian Policy*, 38.

title to land was only allowed at the Crown's discretion. This presupposed that the First Nations peoples were not civilized enough to have inherent land-ownership rights, and as such did not have legal ownership of the land upon which they lived. *St. Catherine's Milling* set a precedent for land rights that denied the First Nations land ownership on the basis that they did not have the same conception of land ownership as the British Crown. This discrepancy continued to be exploited by the Crown, and later by the Canadian government, in First Nations land rights legislation.⁸

The British North America Act of 1867 further complicated First Nations land rights. The constitutional settlement of Confederation did not recognize the First Nations as a founding nation of Canada, even though they had previously been treated as an independent nation.⁹ The Act effectively made the First Nations wards of the state stripping them of their autonomy and intrinsic rights.¹⁰ Moreover, section 91 of the Act delegated former colonial power to the centralized Canadian government. "Indians and land reserved for Indians" were now completely under state control, terminating the diplomatic relationship between the Crown and First Nations.¹¹ Gibson asserts that the incorporation of discrimination and racism into basic Canadian law was the foundation for our contemporary splintered "parallel society."¹² According to Gibson, these discriminating and demeaning policies set the foundation for public disagreements about the nature of First Nations rights and land claims.

The 1876 *Indian Act* and the 1880 *Indian Act* further justified the marginalization of Aboriginal peoples within Canadian society

⁸ Peter Kulchyski, "The Violence of the Letter: Land Claims and Continuing Colonial Conquest in Canada," *Canadian Dimension* 41, no. 1 (2007): 20.

⁹ Gagnon, "Canada: Unity and Diversity," 13.

¹⁰ Karen Virag, "A 'Disastrous Mistake': A Brief History of Residential Schools," *ATA Magazine* 86, no. 2 (2005), 19.

¹¹ United Kingdom. Parliament of the United Kingdom. *The British North America Act of 1867, Enactment no. 1*. Section 91 (24). 1867.

¹² Gibson, *A New Look at Canadian Indian Policy*, 39.

and legislation. These Acts abolished self-government and placed finance, social services, and education under federal control.¹³ Furthermore, Aboriginal peoples' right to mobility was curtailed; individuals were assigned to bands, which were in turn assigned to reserves. In this way, the *Indian Act* imposed a majoritarian democracy upon minorities while strengthening the executive branch of government.¹⁴ The Department of Indian Affairs was created to implement new Aboriginal policy and deal with the so-called "Indian Problem."¹⁵ This prompted the creation of residential schools, which promoted assimilation by reinforcing the English or French language and the Christian religious tradition. Federal policies removed the autonomy of the Aboriginals in treaty-making and self-government, effectively preventing them from becoming either Canadian citizens or a separate nation.¹⁶ By the turn of the twentieth century, First Nations rights had been completely overshadowed by the motives of the Canadian state.

The deplorable conditions of Aboriginal rights and freedoms remained relatively consistent and unchallenged until the return of First Nations soldiers after the Second World War. Aboriginal servicemen began to question their treatment by Canadian society, especially regarding the colonization of the First Nations' traditional lands.¹⁷ The 1950s and 1960s saw increasing public awareness but little political activism, as social and legal inequities became more apparent to both Canadians and First Nations. The formation of First Nations activist groups, such as the Federation of Saskatchewan Indians in 1961 and the National Indian Brotherhood in 1968, demonstrated the growing demand for recognition and action on

¹³ Virag, "A Disastrous Mistake," 19.

¹⁴ Gibson, *A New Look at Canadian Indian Policy*, 41.

¹⁵ Virag, "A "Disastrous Mistake," 19.

¹⁶ Virag, "A "Disastrous Mistake," 19.

¹⁷ Howard Ramos, "Opportunity for Whom?: Political Opportunity and Critical Events in Canadian Aboriginal Mobilization, 1951-2000," *Social Forces* 87, no. 2 (2008), 800.

behalf of Canadian First Nations.¹⁸ The 1966 Hawthorn Commission was established to further investigate the social position of the First Nations in Canadian Society. The *Survey of the Contemporary Indians of Canada* was submitted to the Minister of Indian Affairs and Northern Development, and indicated the government's refusal to assimilate the First Nations. However, this policy was contradicted by the Commission's recommendation that Natives leave their reserves to seek a place in the wider Canadian economy.¹⁹ Hawthorn further recommended spending large amounts of money to obtain minimum standards of living on reserves, but stipulated that the burden be pushed onto provinces in order to encourage integration into society.²⁰ The report coined the term "citizens plus," emphasizing exorbitant expenditures on Aboriginal peoples as reparations for decades of neglect under the Canadian system and to ensure the preservation of their separate identity.²¹ The Commission was not fully implemented because its recommendations were so costly, but it was integral in providing the initial framework for the 1969 White Paper. The paper offered a distinct vision of how to integrate Aboriginals into wider Canadian society, though it maintained the notion of a special citizenship.

Given the heightened interest in Aboriginal affairs, Pierre Trudeau and his Minister of Indian Affairs, Jean Chrétien, produced the 1969 White Paper. Trudeau's vision of a "just society" that valued individual liberty and freedom of opportunity as the cornerstone of the policy. In addition, Trudeau viewed the special legal provision of "citizens plus" as discriminatory towards both Natives and Canadians.²² The White Paper stipulated a six-point plan for change.

¹⁸ Virag, "A Disastrous Mistake," 19.

¹⁹ Tom Flanagan, *First Nations? Second Thoughts*, (Montreal: McGill-Queen's University Press, 2000), 179.

²⁰ Gibson, *A New Look at Canadian Indian Policy*, 44.

²¹ Flanagan, *First Nations? Second Thoughts*, 179; James Frideres and René R. Gadacz. *Aboriginal Peoples in Canada: Contemporary Conflicts*, 6th ed., (Toronto: Pearson Education Canada, 2001), 319.

²² Gagnon, "Canada: Unity and Diversity," 17.

It recommended that legislative and constitutional bases of discrimination be removed, and that there be popular recognition of the contribution of First Nations culture to Canadian life. In addition, the paper recommended that services be provided through the same channels and government agencies for all Canadians, and that those who are furthest behind be helped the most. Moreover, it reinforced that lawful obligations towards all Canadians be recognized, including control of First Nations land being transferred to the traditional inhabitants.²³ The White Paper also proposed three possible courses of action: continuation of reserves, assimilation, or a “full role in Canadian society and in the economy while retaining, strengthening and developing an Indian identity which preserves the good things of the past and helps Indian people to prosper and thrive.”²⁴ In effect, the White Paper would eliminate the legal status of “Indian” in an aim to equalize all Canadians, although it explicitly rejected the idea of assimilation.

The White Paper invoked an inflammatory response from the First Nations peoples across Canada. Harold Cardinal, a Cree activist, published *The Unjust Society* in response. Cardinal denounced the White Paper as “no better than cultural genocide,” and a “thinly disguised programme of extermination through assimilation.”²⁵ To Canada’s First Nations, the White Paper implied that reserves and treaties recognizing First Nations rights would be terminated.²⁶ This directly threatened the livelihood of the First Nations of Canada by revoking access to their traditional lands. In effect, the White Paper would rescind promises of First Nations autonomy made both by the British Crown and Canadian government. The White Paper was rejected because of its blatant disregard for the interests of the First Nations, even though they had participated in research and

²³ Gibson, *A New Look at Canadian Indian Policy*, 46.

²⁴ Chrétien, “Statement of the Government of Canada,” 1969.

²⁵ Harold Cardinal, *The Unjust Society: The Tragedy of Canada's Indians*, (Edmonton: M.G. Hurtig, 1969) 1.

²⁶ Gagnon, “Canada: Unity and Diversity,” 18.

consultation.²⁷ In addition, the White Paper ignored the Hawthorn Commission's recommendations on the topic of special rights.²⁸ The First Nations regarded the White Paper as offensive in its glaring disregard for their rights, compromising what was intended by the government to be a gesture of reparation and progress. The White Paper itself did not advance policy-making on Aboriginal rights; on the contrary, it ignited fierce backlash and controversy.

The chiefs of Canada argued that Trudeau had failed to provide for those First Nations who simply wanted to continue living under the old system and preserve their traditional lands and culture.²⁹ Harold Cardinal led the publication of "The Red Paper," or *Citizens Plus*, a satirical response to the White Paper on behalf of the First Nations leaders in Alberta. In the document, Cardinal and the Indian Chiefs of Alberta advocated for a return to the original treaty relationship and the idea that the First Nations of Canada have additional rights compared to other Canadians.³⁰ Media interest grew, creating unity among the First Nations and piquing the sympathies of many other Canadians. When Trudeau finally abandoned the White Paper due to public backlash in 1971, the "evolving process of gradual improvement in Indian affairs" was abated by the abrupt and forceful attempt to make progress.³¹ In his article "The New Indian Wars," Les Sillars argues that the consequences of not accepting the White Paper have been "costly and tragic..."³² Now [the First Nations peoples] blame their leaders, not segregation, for their suffering – the continual denial of the need for radical reform only prolongs the

²⁷ Sally M. Weaver, "Public Reaction and Government Response," in *Making Canadian Indian Policy: The Hidden Agenda 1968-70*, (Toronto: University of Toronto Press, 1981), 173.

²⁸ Weaver, "Public Reaction and Government Response," 173.

²⁹ Gibson, *A New Look at Canadian Indian Policy*, 47.

³⁰ Indian Association of Alberta, *Citizens Plus*.

³¹ Gibson, *A New Look at Canadian Indian Policy*, 47.

³² Les Sillars, "The New Indian Wars: Trudeau's Repudiated Integrationist 1969 White Paper May Still Offer the Only Hope for the Strife-torn Reserves of 1997," *Alberta Report* 24, no. 45 (1997): 6.

government's denial of basic rights and freedoms."³³ These conflicting viewpoints argue for the same principle in starkly contrasting ways, illustrating two perspectives of a devastatingly complex issue with a single desired outcome.

Though the general negativity toward the White Paper abated after it was rejected, a desire for progress resonated among the First Nations. Tom Flanagan argues in his work *First Nations? Second Thoughts* that it created a "new era in Native politics." Flanagan contends that the White Paper introduced the themes that would prevail in future policy and activism. Aboriginal rights, land claims, and self-government replaced the older concerns of the war on poverty and the notion of "citizens plus."³⁴ According to S. M. Weaver, the White Paper became the "single most powerful catalyst in the Indian nationalist movement," which gave First Nations cause to reaffirm their heritage and identity while organizing against the government.³⁵ The White Paper provoked discussion and debate about the meaning of citizenship and the nature of Canadian federalism. Gibson highlights that the immediate response by the federal government was to send money and responsibilities to the First Nations' independent band governments to avoid future liabilities related to activism. As a result, authority and responsibility became more difficult to trace as the development of First Nations policy passed to the courts.³⁶ The complexity of the issue in both was emphasized as First Nations and non-First Nations activists became engaged. The White Paper was thus a turning point in activism on behalf of First Nations rights, though it failed to produce a lasting change in policy-making.

The ramifications of the White Paper legitimized First Nations rights and claims, though there was inconsistency in government policy. As the social and political movement gained momentum, the First

³³ Sillars, "The New Indian Wars," 8.

³⁴ Flanagan, *First Nations? Second Thoughts*, 180.

³⁵ Weaver, "Public Reaction and Government Response," 171.

³⁶ Gibson, *A New Look at Canadian Indian Policy*, 48.

Nations took up more lawsuits against the federal and provincial governments of Canada. In *Calder v. Attorney-General of BC* (1973), the Nisga'a people nearly won a declaration of ownership of the Nass Valley in British Columbia, on the grounds that there were no formal treaties that ceded land ownership.³⁷ The treaty system was modernized in 1974 when the Office of Native Claims was created as a joint venture between the Department of Indian Affairs and Northern Development and the National Indian Brotherhood.³⁸ To this day, treaties are still arranged such that no rights or title exist independent of the agreement. As a result, more First Nations peoples see modern treaties as a method of reasserting their continuing ownership of traditional territories.³⁹ This regressive policy discounts the agency and autonomous rights of the First Nations. Such technicalities exacerbate tensions and inhibit productive and progressive legislation, which would advance the struggle for aboriginal rights and land claims.

Though the White Paper was a necessary step in realizing the condition of First Nations in Canada, it did not provoke any lasting government policies that recognized their rights and liberties. Since the British Royal Proclamation, there has been no significant legislative reform. First Nations activism reached a turning point with the release of the 1969 White Paper, beyond which the struggle became more public and widely legitimized. The government's lacklustre response reflects an apathetic First Nations policy that stems from necessity, rather than a desire for justice. Progress towards acknowledging the need for change has been diminished by inadequate policy-making. Therefore, while the White Paper produced meaningful activism for First Nations rights, the lack of policy change to match the demand for rights has ultimately trivialized the First Nations' struggle for equity and justice.

³⁷ Gibson, *A New Look at Canadian Indian Policy*, 48.

³⁸ Frideres and Gadacz. *Aboriginal Peoples in Canada*, 320.

³⁹ Frideres and Gadacz. *Aboriginal Peoples in Canada*, 22.

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